

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 5 and 10 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3 and 7 of U.S. Patent No. 7,062,224.

Although the conflicting claims are not identical, they are not patentably distinct from each other because although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 is generic to all that is recited in claim 1 of the patent. In other words, claim 1 is anticipated by claim 1 of the patent. Further claim 1 of the patent recites: *receiving at least one of a plurality of signal transmissions wherein each of the signal transmissions is associated with a call associated with one of a plurality of remote stations; processing the plurality of received signal transmissions to identify received transmissions that include a discriminant applied by a repeater; and designating each of the plurality of received signal transmissions as being transmitted via the repeater if the received signal transmission includes the discriminant, wherein the monitoring characteristic is selected from a group comprising: a length of the call associated with the designated signal transmissions; a number of calls associated with the designated signal transmissions; a number of dropped calls associated with the designated signal transmissions; a call start time associated with the designated signal transmission; a frame error rate (FER) associated with the designated signal transmission; a receive power associated with the designated signal transmission; and a call type associated with the designated signal transmission. The plurality of signal transmissions wherein each of the signal transmissions is associated with a call associated with one of a*

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plurality of remote stations and processing the plurality of received signal transmissions

anticipates the claimed “receiving a signal at a wireless receiver, wherein the received signal includes signals originating from a plurality of distinct transmission stations . . .” and “wherein the derived information reflects a relative signal strength of distinct pilot sequences within the received signal.” Because claim 1 of the patent comprises a plurality of received signals from remote stations.

Allowable Subject Matter

3. Claims 2-4, 9, 12-14, 16-21, 23-27, 41, and 42 are allowed.

Response to Arguments

4. Applicant’s arguments, see remarks, filed 11 September 2009, with respect to the independent claims have been fully considered and are persuasive. The previous grounds of rejection has been withdrawn. However, claims 5 and 10 should have been previously rejected for double patenting reasons and a new double patenting rejection is presented.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DONALD L. MILLS whose telephone number is (571)272-3094. The examiner can normally be reached on 9:00 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Donald L Mills/
Primary Examiner, Art Unit 2462